

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR KING COUNTY

CITY OF SEATTLE, a Washington municipal corporation,)	No.
)	
)	
Plaintiffs,)	COMPLAINT FOR DECLARATORY
)	AND INJUNCTIVE RELIEF
vs.)	
)	
JAMES EGAN, an individual,)	
)	
Defendant.)	
)	

Plaintiff City of Seattle (“City”), through its undersigned counsel, the Seattle City Attorney, hereby brings the following complaint against Defendant James Egan (“Egan”) and seeks a declaratory judgment that RCW 9.73.090(1)(c) prohibits the City from releasing copies of 36 Seattle Police Department (“SPD”) in-car video to Egan at this time. The City further seeks injunctive relief under RCW 42.56.540 enjoining the release of copies of the subject in-car videos to the public by a law enforcement agency subject to this section until final disposition of any criminal or civil litigation which arises from the events which were recorded.

1 **I. PARTIES**

2 1. Plaintiff City of Seattle (“the City”) is a municipal corporation validly formed and
3 existing under the Constitution and laws of the State of Washington. It is a first-class charter city
4 located in King County, Washington.

5 2. Defendant James Egan is an individual who is a licensed attorney whose principal place
6 of business is in King County in the State of Washington.

7 **II. JURISDICTION AND VENUE**

8 3. This Court has subject matter jurisdiction by virtue of RCW 2.08.010, RCW 7.24.010,
9 RCW 7.40.010 and RCW 42.56.540.

10 4. Jurisdiction and venue are proper by virtue of RCW 4.12.025(1), which provides for suits
11 to be brought in the county in which a defendant resides, or has its principal place of business,
12 and RCW 42.56.540.

13 **III. FACTS**

14 5. On September 23, 2011, Egan submitted a request to the SPD Public Disclosure Unit for
15 all complaints against Officer Brett Schoenberg (7429), all complaints against Officer
16 Corey Williams (7472), all complaints against Officer Daniel Auderer (7499), and all
17 complaints against Officer Casey Steiger (7503). He specified that he wished to receive the
18 entire files on these complaints, provided electronically (on a CD) including the OPA findings
19 against the officers. Egan also requested copies of 36 in-car videos made between March 13,
20 2009 and July 26, 2011, which were reviewed in connection with SPD Office of Professional
21 Accountability (OPA) investigations of the four officers. A true and correct copy of the Egan’s
22 September 23, 2011 request is attached to the Declaration of Mary F. Perry as Exhibit A.

1 6. On September 28, 2011, SPD Administrative Specialist II Tricia Colin sent a letter to
2 Egan acknowledging his request and providing an estimated response date on or about
3 November 30, 2011. Colin's response further stated that SPD "currently receives approximately
4 5,000 public disclosure requests annually," and that SPD was "currently experiencing an even
5 higher than usual workload." A true and correct copy of Colin's September 28, 2011 letter is
6 attached to the Declaration of Mary F. Perry as Exhibit B.

7 7. Sheila Friend Gray, SPD Public Requests Unit Manager, provided a response to Egan's
8 request on November 30, 2011, indicating that the Department had identified 22 internal
9 investigation files of complaints filed against the four officers. Egan had already received a
10 copy of one of the files in September, and Friend Gray asked him please let her know if he
11 wanted another copy of the file. One of the files was of a currently open complaint
12 investigation and, therefore, categorically exempt from disclosure in its entirety under RCW
13 42.56.240(1), as interpreted in *Newman v. King County*, 133 Wn.2d 565, 947 P.2d 712 (1997) and
14 *Cowles Publishing Co. v. Spokane Police Department*, 139 Wn.2d 472 987 P.2d 620 (2000). Friend
15 Gray's letter informed Egan that the first installment of four the remaining 20 files had been
16 scanned to a CD and was available for pick up at the Public Request Unit's front counter at
17 the Seattle Police Headquarters. The remaining files would be provided to Egan in future
18 installments. A true and correct copy of Sheila Friend Gray's November 30, 2011 response is
19 attached to the Declaration of Mary F. Perry as Exhibit C.

20 8. Friend Gray's November 30, 2011 letter also stated:

21 In response to your request for copies of the 36 specific videos the Department will not
22 be able to release copies of any of these videos to you. Pursuant to RCW
23 9.73.090(1)(c), no sound or video recording may be duplicated and made available to
the public until final disposition of any litigation which arises from the incidents that

1 were recorded. The subject of the video or his or her attorney may receive a copy of the
2 video prior to final disposition of related litigation. Explanation: Disclosure of
3 information is statutorily prohibited and would violate the subject's right to privacy.
4 See Exhibit C to Declaration of Mary F. Perry.

5 9. On December 7, 2011, Egan sent a letter to SPD Chief John Diaz, appealing the denial of
6 his request for the 36 videos. Egan asked that SPD produce the videos or he would seek
7 “statutory damages at the maximum level based on the Public Disclosure Act.” A true and
8 correct copy of Egan’s December 7, 2011 letter is attached to the Declaration of Mary F. Perry as
9 Exhibit D.

10 10. The Public Records Act, Chapt. 42.56, (“PRA”) provides, in relevant part, that agencies
11 may not distinguish among persons requesting records, and such persons shall not be required to
12 provide information as to the purpose for the request except to establish whether inspection and
13 copying would violate RCW 42.56.070(9) or other statute which exempts or prohibits disclosure
14 of specific information or records to certain persons. (RCW 42.56.080, emphasis added).

15 11. RCW 42.56.540 allows a court to issue an injunction to enforce records release
16 exemptions upon application by an agency.

17 12. RCW 42.56.070 provides that agencies must provide access to records upon request
18 unless they come within the specific exemptions of the PRA, or other statute which exempts or
19 prohibits disclosure of specific information or records (emphasis added).

20 13. Washington’s Privacy Act, RCW Chapt. 9.73, generally prohibits the audio recording of
21 private conversations without first obtaining the consent of all parties to the conversation.
22 RCW 9.73.090(1)(c) provides an exception to this two-party consent requirement for sound
23

1 recordings that correspond to video images recorded by video cameras mounted in law
2 enforcement vehicles.

3 14. The Privacy Act specifically addresses and limits duplication and dissemination of in-car
4 videos in two separate sections, RCW 9.73.100 and RCW 9.73.090(1)(c).

5 15. RCW 9.73.100 requires that video and/or sound recordings obtained by police personnel
6 under the authority of RCW 9.73.090 shall be made available to defense counsel at the request of
7 defense counsel whenever a criminal charge has been filed against the subject of the video and/or
8 sound recordings. SPD provides copies of in-car videos to defense counsel upon request,

9 16. RCW 9.73.090(1)(c) states that “[n]o sound or video recording made under this
10 subsection (1)(c) may be duplicated and made available to the public by a law enforcement
11 agency subject to this section until final disposition of any criminal or civil litigation which
12 arises from the event or events which were recorded.” The choice of the word “public” is not
13 explained in the Privacy Act, but a reasonable inference is that the individual who is the subject
14 of the recording is not the “public” and, therefore, has a greater right to access the recording.
15 Absent evidence of contrary legislative intent, words are to be given their ordinary, dictionary
16 meaning (*State v. McDougal*, 120 Wash.2d 334, 350, 841 P.2d 1232 (1992)); Webster's Third
17 New International Dictionary 1836, 2523 (2002), defines “public” as “accessible to or shared by
18 all members of the community.” *Yoeun v. City of Vancouver*, 141 Wash. App. 1023, 2007 WL
19 3257159 *2 (Wash. App. Div. 2, 2007). SPD provides copies of in-car videos upon request to
20 individuals who are the subject of the recordings.

21 17. RCW 9.73.080(2) makes it a gross misdemeanor for any person to wrongfully disclose
22 any recording in violation of RCW 9.73.090(1)(c).

1 18. SPD personnel risk criminal penalties if they make copies of in-car recordings available
2 to individuals other than the subject of the recording and defense attorneys until after final
3 disposition of all related litigation.

4 19. It is challenging for a law enforcement agency to determine whether final disposition of
5 all criminal or civil litigation which arises from the event or events which were recorded has
6 occurred. RCW 4.16.080 provides that an individual has three years from the date of an injury
7 within which to file a personal injury lawsuit. As a result, all civil litigation which arises from an
8 event that has been recorded may not even be filed for at least three years from the date of the
9 event. Because of this uncertainty, SPD has adopted three years from the date of the recorded
10 event as the earliest date that it may release a particular in-car video to the public. SPD then
11 makes reasonable efforts to determine dispositions for all criminal and civil litigation related to
12 the recorded event.

13 20. When another statute provides the procedure for specific parties to access particular
14 records, that statute supplements rather than conflicts with the PRA and must be followed to
15 access the records. *Deer v. Dept. of Soc. & Health Servs.*, 122 Wn. App. 84, 93. P.3d 195
16 (2004).

17 21. Where a statute limits access to records by particular individuals, the identity of the
18 requester is a core issue, and an agency may distinguish those particular individuals from other
19 requesters. *Franklin Co. Sheriff's Office v. Parmelee*, 162 Wn.App. 289, 253 P.3d 1131 (2011).
20 RCW 9.73.090(1)(c) limits access to in-car videos by the public until final disposition of any
21 criminal or civil litigation which arises from the event or events which were recorded.

22 IV. FIRST CAUSE OF ACTION: DECLARATORY RELIEF

23 22. Prior allegations are adopted by incorporation.

1 23. RCW 7.24.020 empowers this court to declare parties' rights under statutory provisions.

2 24. A controversy exists between the City and Egan regarding whether RCW 9.73.090(1)(c)
3 prohibits SPD to duplicate and make in-car videos available to the public any earlier than three
4 years from the date of the recording, which adjudication by this court would definitely resolve.

5 **V. SECOND CAUSE OF ACTION: INJUNCTION**

6 25. Prior allegations are adopted by incorporation.

7 26. RCW 42.56.540 empowers this court to preliminarily and permanently enjoin the City
8 from duplicating and making in-car videos available to the public any earlier than three years
9 from the date of the events recorded.

10 **VI. PRAYER FOR RELIEF**

11 Wherefore, Plaintiff prays that the court:

12 1. Enter a declaratory judgment that the RCW 9.73.090(1)(c) controls the disclosure of in-
13 car videos.

14 2. Enter an order enjoining the City from duplicating and making in-car videos available to
15 the public any earlier than three years from the date of the events recorded;

16 3. Enter an order granting other relief as the court may deem proper.

17 DATED this _____ day of January, 2012.

18 PETER S. HOLMES
19 Seattle City Attorney

20 By: _____

21 Mary F. Perry, WSBA #15376
22 Tel: (206) 733-9309
23 Gary T. Smith, WSBA #29718
Assistant City Attorneys
Attorneys for Plaintiff City of Seattle